IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.6895 OF 2006

Shirur Shikshan Prasarak Mandal and anr. ..Petitioners.
Vs.
Education Officer Primary, Z.P. Pune & ors.
..Respondents.

Mr.A.V.Anturkar, Sr. Advocate i/by Mr.S.B.Deshmukh for the Petitioners.

Mr. Gajendrasingh Jadhavrao for the Respondent Nos. 1 to 3.

Mr.P.S.Dani for the Respondent No.4.

CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : 03rd April, 2007

P.C.

1. Heard.

2. The Respondent No.4 is a Zilla Parishad School having classes from Ist to IVth standard. The permission to open a Vth std.class which was given by the Education Committee of the Respondent Zilla Parishad is being challenged by the petitioner. The petitioner is also running private primary school and secondary school at Lonikand where the respondent No.4's school is working. Two fold arguments have been advanced by Mr.Anturkar namely that the application for getting permission to open Vth std. was not made as specified in Rule 116(2) of the Bombay Primary Rules,1949 and

secondly, that the permission granted by the Education Committee of the Zilla Parishad is improper because according to the learned counsel, the said permission would have been granted by the General Body of the Zilla Parishad. We do not find any merit in the submissions made by the learned counsel. Rule 116(2) speaks for Zilla Parishad and Municipalities and is only directory one because to impart free primary education is the fundamental duty of the Zilla Parishad and Municipalities. Not only that, to get a primary education is the fundamental right of the every citizen in this country and therefore, while discharging such a basic right, procedural rules must not come into the way. Secondly, the Education Committee has been established under Section-78 of the Zilla Parishad Act and the Schedule-1, Entry No.24 is in respect of the duties of the Zilla Parishad for the education and those duties are discharged through the Education Committee which is constituted under Section-78 of the said Act and therefore, the argument that only the Zilla Parishad should have passed resolution is hyper-technical and untenable in law. It is the Education Committee who looks after the primary education because under Section 109(1)(a), the Education Committee is incharge of the works and development scheme within their powers. We do not find any substance in the second contention of the learned counsel for the petitioner. We are not with the

learned counsel for one more reason that the education imparted by the petitioner-institution is paid education since it is a private school, but the school which is run by the Zilla Parishad is a school established to discharge the fundamental obligation of the Zilla Parishad and that too a free education and therefore, on that ground the petitioner cannot be allowed to raise the objection for opening Vth std. at the behest of the Zilla Parishad. Further, all these points have been argued at bar, but they do not find place in the petition. The aforesaid points are raised at the eleventh hour across the bar and therefore, we are not inclined to consider the said points.

. Petition is therefore, dismissed.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**